
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARLON ALONZO SMITH,

Defendant.

**MEMORANDUM DECISION
AND ORDER DENYING MOTION
TO APPOINT COUNSEL**

Case No. 2:16-cr-00020-DN

District Judge David Nuffer

Defendant Marlon Alonzo Smith seeks appointment of counsel to assist in obtaining post-conviction relief.¹ However, this case is closed and the Tenth Circuit Court of Appeals has affirmed Mr. Smith's conviction and sentence.² There is also no constitutional or statutory right to the appointment of counsel in post-conviction proceedings, unless an evidentiary hearing is held.³ Counsel may be appointed in a post-conviction proceeding when "the interests of justice so require" for a "financially eligible person."⁴ But Mr. Smith has not initiated post-conviction proceedings challenging his conviction and sentence. And a motion for appointment of counsel is more appropriately filed in the post-conviction proceeding, rather than the underlying criminal action.

¹ Motion for New Attorney ("Motion"), [docket no. 203](#), filed June 15, 2020.

² Order and Judgment, [docket no. 200](#), filed Feb. 25, 2020.

³ *Paul v. United States*, 2006 WL 314563, *1 (D. Utah Feb. 9, 2006); Rules Governing Section 2255 Proceedings for the United States District Courts 8(c).

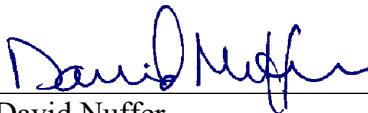
⁴ 18 U.S.C. 3006A(a)(2)(B).

ORDER

THEREFORE, IT IS HEREBY ORDERED that Mr. Smith's Motion⁵ is DENIED without prejudice to refiling in a post-conviction proceeding.

Signed June 18, 2020.

BY THE COURT

A handwritten signature in blue ink, appearing to read "David Nuffer", is written over a horizontal line.

David Nuffer
United States District Judge

⁵ [Docket no. 203](#), filed June 15, 2020.